

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In Re: Pork Antitrust
Litigation

File No. 18-cv-1776
(JRT-JFD)

St. Paul, Minnesota
November 4, 2022
10:00 a.m.

BEFORE THE HONORABLE JOHN F. DOCHERTY
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

(MOTION HEARING VIA ZOOM)

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P R O C E E D I N G S

IN OPEN COURT

(Via Zoom)

THE COURT: Good morning, everyone. My name is John Docherty. I'm the U.S. Magistrate Judge assigned to this case. This is the In Re: Pork Antitrust Litigation MDL. The case number is 18-cv-1776.

We are here this morning for oral argument on the plaintiffs' motion that I issue letters rogatory to the Court in Canada to allow the taking of the deposition of an employee named Sumio Matsumoto.

I have read the submissions of the parties. They were informative, and I thank you for them. I think that will help us guide the argument this morning.

Appearances have been taken while -- before I came in, and I don't think there's a need to retake them. So why don't we get started. Mr. Bourne, you may begin. And I think what I'd appreciate hearing from you, over and above your prepared remarks, would be, number one, how long is this going to take, and, number two, what rejoinder you've got to Tyson's statement that this should have been done some time ago.

MR. BOURNE: Thank you, Your Honor. Joe Bourne here for the direct purchaser plaintiffs from Lockridge Grindal Nauen and also speaking on behalf of all plaintiffs.

1 We don't know exactly how long it will take. My
2 guess would be, based on the information we've seen, it
3 could be six months. I think it's important to note that
4 extending the fact discovery deadline to allow this
5 deposition to occur would not impact the schedule in any
6 other manner. Class certification is set to be heard in
7 late January. We're going to be speaking with the Court
8 in -- later this month about deadlines for merits expert
9 discovery and dispositive motion briefing.

10 We would anticipate that those would be -- we
11 haven't finished our meet and confer, but I don't expect the
12 merits expert reports to occur any less than six months from
13 now, and summary judgment, of course, would be some several
14 months after that would be my expectation. Of course that
15 will be something we'll be discussing with the Court in a
16 couple of weeks.

17 THE COURT: Mr. Bourne, I mean, this is your case,
18 and you know it very well, I'm sure. But if you're going to
19 be having expert -- proceedings regarding expert witnesses
20 in the spring and this letter rogatory might take six
21 months, at least in my experience, experts like to give
22 their opinion on the basis of a fully-developed fact
23 discovery record. Is that going to be a problem here?

24 MR. BOURNE: Your Honor, I don't anticipate that
25 it will be a problem. The parties haven't -- we're still

1 waiting to hear from the defendants on their view of when
2 merits expert discovery should occur or if it should occur.
3 So it's hard to say right now. But I don't anticipate that
4 it will be a problem. The plaintiffs, as the party with the
5 burden of persuasion, will be prepared to submit their
6 merits expert reports.

7 As to timeliness, Tyson relies heavily on two
8 cases in its papers, and those cases are both very different
9 than the circumstances here; the *Cardiovascular Systems*
10 opinion that Judge Menendez wrote, and the *Bombardier*
11 *Recreational Products* opinion from Judge Brisbois.

12 In both of those cases, fact discovery had closed
13 before the motion for a letter rogatory was filed. In
14 *Cardiovascular Systems*, the Court noted that a significant
15 amendment of the scheduling order would be required because
16 both discovery had closed and the case was on the eve of
17 summary judgment with a hearing date already in place.

18 In *Bombardier Products*, discovery had, one,
19 closed, including multiple extensions specifically to
20 complete only identified depositions, and yet the parties
21 seeking the depositions there ignored that and waited on the
22 foreign depositions. There, the witnesses were disclosed in
23 the initial disclosures, unlike here. Those were also
24 breach of contract and patent cases which involved far fewer
25 documents and potential deponents than an antitrust

1 conspiracy case such as this one.

2 THE COURT: I take your point that in the
3 *Bombardier* and the cardiac case, the parties didn't move for
4 the letters rogatory until fact discovery had closed. You
5 did get in I think I can say under the wire without it being
6 a stretch.

7 Tell me about good cause here, though. I mean,
8 you're going to not only be asking for letters rogatory,
9 you're also asking for an amendment to the scheduling order
10 and that does require good cause. So what is the good cause
11 for extending the scheduling order to accommodate this
12 deposition?

13 MR. BOURNE: Good cause focuses on the diligence
14 of the plaintiffs and also considers any prejudice to the
15 party opposing the motion. There's no prejudice to Tyson
16 here. I think the diligence of the plaintiffs in conducting
17 discovery is likely to be the central consideration per the
18 Court.

19 Tyson produced over a million documents. The
20 defendants and certain third parties have produced over
21 3.8 million documents. Tyson produced a large chunk of
22 those documents by the substantial completion deadline in
23 September 2021, although it continued to produce documents
24 until very recently on a rolling basis. Those remaining
25 productions were smaller, but they still appeared.

1 It takes a long time to review 3.8 million
2 documents. The plaintiffs have taken approximately 87
3 depositions. We were allotted ten per defendant,
4 including -- and for Tyson, we're seeking Mr. Matsumoto as
5 the tenth. It takes time to work through millions of
6 documents and dozens of depositions.

7 THE COURT: Before you go on, let me ask you about
8 the -- about the timing -- the timing of document production
9 specifically. I mean, you say these are rolling
10 productions. You got some documents only just before
11 depositions. But is it not correct that those documents
12 were produced because certain other plaintiffs had joined
13 the case; in other words, that the document production
14 requests that were specific to the plaintiffs who were in
15 the case when this came up had been completed?

16 MR. BOURNE: The direct action plaintiffs were in
17 the case during the discovery period, Your Honor. It is
18 true that the requests for which the most recent productions
19 occurred were responsive to requests by those direct action
20 plaintiffs, and they did enter the case later than the class
21 plaintiffs. But, you know, they were participating in
22 discovery during that timeframe.

23 THE COURT: So were there then document requests
24 for those direct action plaintiffs? Let me ask it a
25 different way: Were the documents that came in relatively

1 shortly before the depositions, were those direct action
2 plaintiff documents or were those documents for the balance
3 of the case?

4 MR. BOURNE: Your Honor, my understanding is that
5 they were responsive to the negotiations with the direct
6 action plaintiffs; however, they weren't specific to the
7 direct action plaintiffs. It wasn't as simple as produce
8 your e-mails with direct action plaintiff US Foods, for
9 example. They sought substantive liability evidence that
10 was generally applicable to all plaintiffs for all of their
11 cases against the defendants, and that is part of why there
12 were substantial meet and confer efforts between the
13 defendants and the direct action plaintiffs and part of why
14 it took so long to get those additional documents.

15 THE COURT: And I take your point. But I think my
16 point, when you are talking about good cause, is it sounds
17 to me like on the landscape as it existed when this issue
18 came up regarding Mr. Matsumoto, Tyson had done what it was
19 required to do. The extra documents that you place some
20 emphasis on in your motion papers were not documents that
21 you had asked for, in other words.

22 MR. BOURNE: The direct action plaintiffs aren't
23 parties to this motion, however, I agree with the synopsis
24 that Your Honor just articulated. And I think it's
25 important to note that the bulk of Tyson's million-plus

1 documents, yes, they were produced by September 2021.
2 That's still a million documents, that's three-plus million
3 documents from the defendants. We can't immediately review
4 those and determine which are the people that need to be
5 deposed. It takes time to work through that.

6 And --

7 THE COURT: Okay. So why then -- that's a good
8 opening. Why then do you -- are you so eager to take the
9 deposition of Mr. Matsumoto? I know that Ms. McConnell had
10 things to say about him. But the defendants point out that
11 Mr. Matsumoto's supervisors are also in this case; and, in
12 fact, I think, correct me if I'm wrong, but Mr. Krehbiel
13 should have been deposed yesterday and Mr. Andriessen the
14 day before yesterday. I believe they are both supervisors
15 of Mr. Matsumoto. Did anything come out of those
16 depositions that changes this motion hearing this morning?

17 MR. BOURNE: Your Honor, the -- pursuant to the
18 request of one of those witnesses, Jay Krehbiel, that
19 deposition is now going to occur on November 16th.

20 THE COURT: Okay.

21 MR. BOURNE: Mr. Andriessen was deposed two days
22 ago on November 2nd. And I believe that that deposition
23 shed further light on the importance of the deposition of
24 Mr. Matsumoto.

25 THE COURT: Could you expand on that, please?

1 MR. BOURNE: Yes, Your Honor. There are two areas
2 in which we believe that Mr. Matsumoto has important unique
3 additional evidence based on his own personal knowledge and
4 direct involvement. One is identifying competitors in Agri
5 Stats reports, the other is export sales of pork out of the
6 United States to Japan and Asia.

7 Mr. Andriessen -- my understanding is that
8 Mr. Andriessen supervised Mr. Matsumoto in the export area.
9 He was not aware of whether Mr. Matsumoto talked to
10 competitors about export sales of pork. He testified that
11 he never asked him that.

12 That is an important issue in the case.
13 Mr. Matsumoto had information about defendant JBS visiting a
14 customer in Japan. And Mr. Matsumoto told other employees
15 of Tyson not to mention that they knew about the visit.
16 Mr. Andriessen speculated that Mr. Matsumoto got the
17 information from the customer, but he doesn't know because
18 he didn't ask Mr. Matsumoto. Mr. Matsumoto is the one who
19 knows.

20 I also think it's worth noting, Your Honor, that
21 on October 12th, the day before the plaintiffs filed this
22 motion, a deposition of a Seaboard witness, Duke Sand,
23 occurred in which Seaboard terminated the deposition so that
24 the witness could obtain independent counsel and consider
25 whether to invoke the Fifth Amendment for questions related

1 to communications with competitors about export sales and
2 pricing to Japan.

3 THE COURT: Okay. Who was that again?

4 MR. BOURNE: Duke Sand of Seaboard.

5 THE COURT: Okay.

6 MR. BOURNE: And the issue there --

7 THE COURT: Forgive me for having to ask. Is
8 Seaboard a Tyson subsidiary?

9 MR. BOURNE: No, Your Honor. It's one of Tyson's
10 competitors and co-defendants in this case.

11 THE COURT: Okay.

12 MR. BOURNE: But the subject matter there, export
13 sales to Japan and communications with competitors in which
14 he might invoke the Fifth Amendment at the remainder of his
15 deposition, is one for which Mr. Matsumoto had authority and
16 was the person at Tyson according to the other -- the other
17 testimony of Tyson individuals.

18 THE COURT: Okay. And you also -- besides export
19 sales of hogs to Asia, you also want to talk with
20 Mr. Matsumoto about decoding the Agri Stats data; correct?
21 I have to observe, I see some tension between your complaint
22 and your motion papers here. The complaint -- at least I
23 took away from it that Agri Stats was fairly transparent
24 that this was the way that the competitors communicated with
25 each other and maintained their price-fixing conspiracy.

1 But now it sounds as though decoding Agri Stats is really a
2 job for the National Security Agency and you need to go see
3 Mr. Matsumoto in Japan to figure it all out. Is there some
4 tension there between the difficulty of Agri Stats in the
5 complaint versus the difficulty of decoding Agri Stats in
6 the papers that you submitted in support of this motion?

7 MR. BOURNE: I don't believe there's tension
8 necessarily. As discovery has occurred, of course we've
9 learned more about how the deanonymization process works.
10 What we believe the evidentiary record now supports is that,
11 yes, the defendants did monitor their conspiracy, in part,
12 through decoding the information in the Agri Stats reports.

13 And what we know is that the other Tyson employees
14 have, you know, said they don't know what Mr. Matsumoto
15 knew, how he knew it, or how he contributed. Ms. McConnell
16 testified that Mr. Matsumoto provided information that was
17 important to her in that process, but she couldn't -- other
18 than saying it was based on his knowledge and his contacts
19 and his history in the industry, she couldn't specify, you
20 know, how he provided the information that she used to
21 attempt to deanonymize the Agri Stats reports, and,
22 therefore, we believe it's important to Mr. Matsumoto to
23 find out did you talk to competitors. Where did you get the
24 information that you provided? How did you get the
25 information you provided?

1 I also think it's really important to note,
2 Your Honor, this is a discovery motion. The question --
3 setting aside the timeliness issue where the plaintiffs need
4 to show good cause, we only need to show that this will
5 further discovery, and then Tyson needs to show that there's
6 good cause not to take the deposition under the prevailing
7 standard.

8 What Tyson is really trying to do is to have an
9 early adjudication of summary judgment, who has the better
10 evidence on whether these Agri Stats reports were used to
11 identify competitors, whether that mattered. And that's
12 simply inappropriate for a discovery motion in the
13 plaintiffs' view.

14 THE COURT: Okay. All right. Those are all the
15 questions I have, but is there more that you think it's
16 important for me to keep in mind as I make my decision?

17 MR. BOURNE: Your Honor, I believe that addresses
18 the key points that I was planning to discuss as well. I
19 would request the right to respond to argument by Ms. Strang
20 Aberg.

21 THE COURT: Yeah, I'll give you a few minutes
22 after Ms. Strang Aberg has spoken. It will be limited, of
23 course, to the points that she makes, and I won't let you
24 introduce any new material, okay?

25 MR. BOURNE: Thank you.

1 THE COURT: Ms. Strang Aberg, over to you. And
2 would you begin by helping -- how do you wish to be
3 addressed? Is it Strang Aberg? Is it Strang?

4 MS. STRANG ABERG: You can just say Aberg.

5 THE COURT: Aberg, so I'm -- not even Aberg.
6 Aberg, okay.

7 All right. You know, looking at this, it does
8 seem that Tyson is very anxious not to have Mr. Matsumoto's
9 deposition taken, and this causes a little bit of a raised
10 eyebrow on my part. I hear all the things you're saying
11 about timeliness, but, really, Mr. Matsumoto's deposition
12 could be taken on Monday if Tyson would tell him it's part
13 of his job to have this deposition taken.

14 MS. STRANG ABERG: Yes, Your Honor, so here's how
15 I would respond to that. I mean, first, this is a unique
16 situation. Mr. Matsumoto is distinguishable from the many
17 other witnesses that Tyson has already made available for
18 deposition. They have all been U.S. residents, and most of
19 them have been officers or directors of Tyson such that they
20 are subject to deposition by notice, whereas, Mr. Matsumoto
21 is a lower-level employee and is not.

22 Mr. Matsumoto also is not willing to testify, and,
23 put simply, Tyson is not obligated to do more than the law
24 requires to help plaintiffs sue us, essentially. And
25 plaintiffs seem to want to imply that there's something

1 untoward about Tyson not using the threat of termination to
2 force this, but really what this comes down to is this
3 person is a lower-level employee. We don't plan to rely on
4 his testimony, and we don't think we need it. We don't
5 think it's essential to the case. And we don't want to
6 force him to give up his legal rights. They are perfectly
7 able to pursue his testimony, you know, in accordance with
8 the law, but we don't believe that we should have to
9 intervene on their behalf to force him to do something he
10 doesn't want to do.

11 THE COURT: And I would accept all of that were it
12 not that you are also saying this will delay things for 6 to
13 12 months. You cite a treatise on international discovery
14 for that proposition. And, yes, you are entitled to compel
15 the plaintiffs to follow the law and get letters rogatory
16 and go to Canada and depose Mr. Matsumoto if it comes to
17 that, but I don't think that you can simultaneously say, Oh,
18 this will take a very long time, and, therefore, that's one
19 reason why it ought to be denied.

20 MS. STRANG ABERG: Your Honor, I understand that
21 tension and that counterpoint to our argument of course. I
22 will say also to the plaintiffs' point that there is no
23 prejudice to Tyson to making Mr. Matsumoto available, we
24 disagree with that as well. Mr. Matsumoto is Japanese.
25 He's a non-native and non-fluent English speaker. His

1 deposition will be considerably more time-consuming,
2 expensive, onerous, and risky frankly for Tyson as compared
3 to other deponents simply because of that language barrier.
4 He has an imperfect command of the English language which is
5 apparent on the face of the documents that have been used in
6 this case. And, accordingly, we will definitely need an
7 interpreter both for prep and for the deposition which will
8 delay things.

9 And, in addition, you know, I think as we all know
10 as attorneys, sitting for a deposition is a really difficult
11 exercise even for native English speakers. We have seen in
12 this case that plaintiffs' strategy in these depositions is
13 to try to get deponents to confirm plaintiffs' desired
14 interpretations and inferences from ambiguously worded
15 e-mail communications. The type of close reading,
16 listening, and explanation that's going to be needed to
17 respond to these types of questions is difficult enough for
18 our English speakers. It's going to be much, much more
19 difficult for a non-native English speaker. So we're really
20 concerned about that, and that's the prejudice.

21 THE COURT: The other question that I had
22 concerning your motion papers was it seemed to be that
23 Mr. Matsumoto's -- your argument seemed to be that
24 Mr. Matsumoto's testimony was not relevant because the
25 plaintiffs' entire theory of the case was wrong because

1 actually Agri Stats couldn't be used to communicate among
2 the members of the price-fixing conspiracy. That, though, I
3 mean, to Mr. Bourne's point, does seem to be more summary
4 judgment and less discovery, because if you're right about
5 that, then this whole case, I mean every witness who's been
6 questioned about Agri Stats has been giving irrelevant
7 testimony.

8 But, I mean, at this point, this case has survived
9 a couple of, you know, robust motions to dismiss, and it is
10 the theory of the case that there was a price-fixing
11 conspiracy, it was operated through a communication channel
12 of Agri Stats. So I understand you don't agree with that,
13 but if that's the theory of the case, how can
14 Mr. Matsumoto's testimony not be relevant?

15 MS. STRANG ABERG: I think setting aside whether
16 it's plausible or not that Agri Stats could have been used
17 in the manner alleged, which I will grant that we did
18 include some argument in our briefing of course on that
19 issue, but even setting aside whether that is the case, I
20 think plaintiffs have all they need. I think that there is
21 no dispute, and the record is very clear that Debbie
22 McConnell at Agri Stats was the Agri Stats person at Tyson.
23 I don't think that any of the testimony that's been elicited
24 in this case in any way contradicts that or suggests that
25 Mr. Matsumoto was somehow, you know, her second in command

1 or her right-hand man on that front also analyzing the
2 reports. In fact, the only document that plaintiffs cite in
3 their brief as support for this argument that Mr. Matsumoto
4 was essential to helping Ms. McConnell in this effort is an
5 e-mail where she e-mails four different people at Tyson
6 asking all of them, including Mr. Matsumoto, for some input
7 into the -- how she's guessing who was who. So he's just
8 one of many.

9 And I also don't agree that either Ms. McConnell,
10 Mr. Andriessen, or anyone else who was asked about
11 Mr. Matsumoto's role at deposition, you know, broadly
12 disclaimed any knowledge of what he was doing or where he
13 got his information.

14 I would definitely take issue with the
15 characterization from Mr. Bourne that at the deposition of
16 Mr. Andriessen this week, that he testified that he doesn't
17 know where Mr. Matsumoto got his information. That's not
18 accurate. He testified repeatedly that he understood
19 Mr. Matsumoto had a lot of connections with customers in
20 Japan and that those customers told him information about
21 his competitors, not direct competitor communication.

22 THE COURT: Isn't this the plaintiffs' decision to
23 make? They look at the deposition transcript, you look at
24 the deposition transcript, both of you use that deposition
25 transcript as one input into an evolving litigation

1 strategy. And if they look at Ms. McConnell's deposition
2 and say, I think we want to go and talk to Mr. Matsumoto,
3 don't they get to make that decision? I mean, I'm not
4 talking about this motion. But if they, in your view, want
5 to waste one of their ten depositions on Mr. Matsumoto,
6 that's their lookout, isn't it?

7 MS. STRANG ABERG: Your Honor, definitely. I
8 absolutely agree with that. The tension here though is the
9 requirement to show good cause. They cannot get this
10 deposition done within the timeframe allotted to them, and
11 they have had a lot of time. And as far as the document
12 productions go, I think that's been really misconstrued.
13 The documents that they rest this motion on, the documents
14 establishing that Mr. Matsumoto talked to Debbie McConnell
15 about Agri Stats and also had communications with people
16 within Tyson about exports, those have been in the discovery
17 record for 18 months or more. They are not -- none of the
18 docs they are citing in their brief are from these recent
19 productions that they point out, and so it's just a side
20 show. It's not relevant.

21 So they had access to these materials. They
22 elected to wait over a year after receiving all of Debbie's
23 documents before deposing Debbie, and even then, they
24 deposed her in June and waited two and a half more months
25 before raising Mr. Matsumoto's name. So it's just delay

1 after delay.

2 Of course they have the right -- they could have,
3 a week after Ms. McConnell's deposition, come to us and
4 said, Mr. Matsumoto is really interesting. We want to
5 depose him. And maybe there would have been time to do so
6 within the scheduling order at that point. But, instead,
7 they waited until the very, very end of fact discovery. I
8 think it's only fair for them to suffer the consequences of
9 that.

10 THE COURT: Is it part of my decision that
11 Mr. Bourne has represented that this case can go forward as
12 scheduled, that there will be no knock-on effects or
13 collateral consequences to other deadlines if this motion is
14 granted?

15 MS. STRANG ABERG: I don't think that's fair to
16 say. As Mr. Bourne stated, it's still very much in flex and
17 to be determined what the schedule will be. Direct action
18 plaintiffs, for example, I think want to get moving with
19 expert discovery and have proposed a schedule that -- or at
20 least initially proposed a schedule that would have expert
21 reports being filed certainly prior to six months from now.
22 We don't exactly know what the timing will be, but I don't
23 think it's at all a safe assumption that it will not -- that
24 this deposition being taken pursuant to the Canadian Court's
25 process will not interfere.

1 And also of course there's no commitment that it
2 takes six months. As Your Honor knows, I'm sure full well,
3 you can't accurately predict how long something is going to
4 take in a court, in particular, in a foreign court.
5 Mr. Bourne said they estimate around six months. It could
6 be longer than that, surely.

7 THE COURT: Okay. All right. You've answered all
8 my questions, but what else do you want to tell me before I
9 make up my mind?

10 MS. STRANG ABERG: I think I would like to just
11 address a few of the points that Mr. Bourne raised that we
12 haven't discussed yet. I think, one, this point about
13 Seaboard and the deposition of a Seaboard CEO being cut
14 short by Seaboard's attorney because of apparent -- or based
15 on questioning on a document that showed communications
16 between Seaboard and its competitors, it was a communication
17 between Seaboard and one competitor, not Tyson. Plaintiffs
18 have not suggested anything that would -- or put forward any
19 documents or any testimony that would suggest that
20 Mr. Matsumoto even knows Duke Sand or the other person at
21 the competitor -- non-Tyson competitor that Duke Sand was
22 allegedly talking to about this sensitive information. And
23 so it's just got no connection whatsoever to Mr. Matsumoto
24 except for the fact that Mr. Matsumoto is Japanese and sells
25 pork to Japan. So I don't think there's any indication

1 whatsoever that that makes the motion any stronger.

2 And then I think just also to the point that no
3 one can say but Mr. Matsumoto who Mr. Matsumoto's sources
4 were for the information he had about competitors, the
5 document that plaintiffs cite in their motion on that point,
6 it does not support any reading that he was getting this
7 information from Smithfield directly.

8 The document on its plain face references that
9 this is rumors about what Smithfield may do. And so it's
10 just not consistent with the notion that he was getting the
11 information from Smithfield directly. And it, I don't
12 think, supports the contention that there's -- you know,
13 that he's got sketchy competitor communications that he
14 needs to answer for.

15 THE COURT: Okay. All right. Thank very much.

16 MS. STRANG ABERG: Yeah.

17 THE COURT: I appreciate it.

18 Mr. Bourne, is it correct that that document that
19 this motion is premised upon was in your custody for
20 18 months before this motion was made?

21 MR. BOURNE: Your Honor, I have -- I'm not
22 certain, frankly. I can't -- won't dispute it. I'm sure
23 that Ms. Aberg is truthfully representing the timing of when
24 that document was produced, although, again, I think it's
25 important to note they've produced a lot of documents. The

1 plaintiffs can't be expected to instantly know what all of
2 them say.

3 I also think it's important to note that part of
4 our strategy in determining who to depose has to be you see
5 how the depositions go. We deposed Ms. McConnell first or
6 second among Tyson because we anticipated that she had
7 important information about identifying competitors in Agri
8 Stats reports. We then deposed, you know, a handful of
9 other people, each time evaluating who makes sense, who do
10 we need, who can fill, not gaps necessarily, but who can
11 provide additional information we think will be important.
12 It took time to work through that process, and we eventually
13 identified Mr. Matsumoto.

14 We also --

15 THE COURT: Well, I'll take your second point that
16 after you've taken a deposition, you need to do some
17 analysis, but I will not -- I can't accept your first point
18 about difficulty of analyzing a volume of evidence. There
19 is a lot of material in this case, but there is a lot of
20 lawyers in this case. Reading these papers last night, I
21 mean, half of these submissions are signature pages. And
22 right now there's 23 attorneys participating in this hearing
23 and -- while another hearing is going on at the same time in
24 front of Judge Tunheim. So certainly I believe that the
25 personnel are here to analyze documents, but I will accept

1 that there's some measure of needing to review a deposition
2 and then make some decisions, but I keep coming back to the
3 fact that this is -- I mean, this document where
4 Ms. McConnell says, Reach out to Mr. Matsumoto and get his
5 guesses as to who these people are on the Agri Stats
6 reports, if you've had that for 18 months, it's a concern.

7 MR. BOURNE: Your Honor, I do believe we've had
8 that for 18 months.

9 The other point that I wanted to address briefly
10 that Ms. Aberg raised is the fact that Tyson's other
11 witnesses were subject to deposition by notice and not
12 Mr. Matsumoto because he's a lower-level employee. Every --
13 Tyson's other witnesses include former employees and current
14 employees. Every witness for every defendant in this case,
15 80 some depositions or 70 something, I think, every single
16 one has been deposed by notice without need for subpoena,
17 including former employees who theoretically would require a
18 subpoena, because that has been the parties' practice in the
19 case with one exception, Josh Edwards of Agri Stats, who
20 Agri Stats did not know how to contact.

21 So we reasonably anticipated that Mr. Matsumoto
22 would also -- you know, we would ask Tyson to take his
23 deposition, which we did at the start of September, two
24 months before the close of fact discovery, and we
25 anticipated that they would make him available by Zoom like

1 they and all the other defendants have done throughout the
2 last year and a half of depositions.

3 THE COURT: All right. Thank you both. Let's
4 take a couple of minutes for me to review some notes. And
5 then I will come back out and, if possible, I'll give you a
6 decision. Okay. Stand by.

7 (Recess taken at 10:35 a.m.)

8 * * * * *

9 (10:39 a.m.)

10 **IN OPEN COURT**

11
12 THE COURT: All right. Let's resume.

13 Ms. Drost, are you ready to go?

14 THE COURT REPORTER: (Nods head.)

15 THE COURT: Okay. Plaintiffs' motion for letters
16 rogatory will be granted. I'm not planning on issuing a
17 written order on this, and so the transcript of what I'm
18 about to say will be the Court's order on this point.

19 The first question is whether Mr. Matsumoto has
20 relevant discoverable information. He does. The defendants
21 think that, as I understand them, were they in plaintiffs'
22 shoes, this isn't the person they would spend one of their
23 ten depositions to Tyson on, but that is the plaintiffs'
24 decision to make. And it is clear, given the correspondence
25 between Ms. McConnell and Mr. Matsumoto and also

1 Mr. Matsumoto's involvement in the sale of hogs to Asian
2 customers, that Mr. Matsumoto does, in fact, have relevant
3 and discoverable information.

4 The more, I won't say challenging, but the piece
5 of this that takes a bit more analysis is good cause. This
6 is a very large and very complicated case; but as I pointed
7 out during the oral argument, it's also a very well-staffed
8 case. However, it is true, of course, that both parties are
9 constantly evaluating what their next decision in terms of
10 this litigation ought to be, and I absolutely accept
11 plaintiffs' representation that following the deposition of
12 Ms. McConnell, they made the decision to seek to depose
13 Mr. Matsumoto.

14 I believe that the plaintiffs have acted
15 diligently. I also believe part of what factors into that
16 is Mr. Bourne's representation that this was -- the
17 requirement that Mr. Matsumoto be deposed pursuant to
18 letters rogatory was a departure from the practice of the
19 parties in this particular litigation.

20 So because Mr. Matsumoto has relevant and
21 discoverable information, because there's good cause for a
22 very limited amendment of the pretrial scheduling order, the
23 letters rogatory will issue.

24 I do want to make clear that the modification of
25 the pretrial scheduling order is just for the deposition of

1 Sumio Matsumoto pursuant to letters rogatory in Canada. So
2 that is that.

3 I believe the next step, though, Mr. Bourne, in
4 terms of letters rogatory, is I need an actual physical
5 document that can be sealed and signed and so forth. And
6 I'll put it on you to research all of those requirements and
7 get me what it is that I need.

8 I'm also going to ask you -- and I know you have
9 the resources -- to be very sure of Canadian law and, to the
10 extent it is relevant in a situation like this, the law of
11 the province in which Mr. Matsumoto is located. I am
12 concerned about timing. And I certainly don't want this to
13 be sent back by the Canadian authorities for a do-over
14 because it wasn't done right the first time.

15 So that is the ruling of the Court. Mr. Bourne,
16 do you have any requests for clarification concerning the
17 ruling I've just made?

18 MR. BOURNE: No, Your Honor. We will make sure to
19 get you the materials correctly as soon as possible, and we
20 are partnering with counsel in British Columbia to make sure
21 we follow the law correctly.

22 THE COURT: Good. Glad to hear that.

23 Ms. Aberg, any requests for clarification
24 concerning the Court's ruling?

25 MS. STRANG ABERG: No, Your Honor. Thank you.

1 THE COURT: All right. Thank you all. Have a
2 good weekend. I'm sure we'll be talking again as this case
3 goes forward. Take care. Court is adjourned.

4 (Court adjourned at 10:44 a.m.)

5 * * *

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7
8 I, Erin D. Drost, certify that the foregoing is a
9 correct transcript from the record of proceedings in the
10 above-entitled matter to the best of my ability.

11
12 Certified by: s/ Erin D. Drost

13 Erin D. Drost, RMR-CRR
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